




4. Extra Good Conduct Time. The commanding officer of the Naval brig may reduce the term of a prisoner's sentence for good conduct based on faithful observance of all the rules and regulations of the brig.
5. Credit for Pretrial Confinement. The correctional facility will reduce the sentence to confinement by applying the appropriate credit required both by administrative regulation and judicial order for pretrial confinement in accordance with its regulations.


**8.F.6.d. Suspension or Remission of Unexecuted Portion of Sentence**


Provisions relating to the powers of court-martial convening authorities and of supervisory authorities to remit or to suspend unexecuted portions of sentences are set forth in Rule 1108, MCM (series).

1. Clemency. Clemency is an action taken by duly constituted authority to reduce the amount or severity of a court-martial sentence. It is the Commandant's policy to extend to persons convicted by courts-martial whatever clemency may represent the best interests of the Coast Guard and the individual. Clemency may consist of mitigation, remission, or suspension of a sentence in whole or in part. Mitigation usually is a reduction in the amount of the sentence. It may also take the form of a change in the kind of punishment from that adjudged to another authorized punishment which is another authorized punishment which is less severe (confinement to restriction, forfeiture of pay to detention of pay, dishonorable discharge to bad conduct discharge). An adjudged punishment can never be increased in severity. Remission of punishment amounts to a reduction or cancellation of unexecuted portions of a sentence, but not to a change in the nature thereof. Suspensions are stays of execution of unexecuted portions of a sentence with provisions for automatic remission at the successful completion of a specified term of probation. It should be noted that clemency in no way affects an approved conviction. Rather, a grant of clemency merely represents an administrative relaxation of the terms of an adjudged sentence. The following commanding officers are authorized to remit, mitigate, or suspend any part or amount of the unexecuted part of any sentence (grant clemency) under the authority of Article 74(a) of the Code:
  - a. The Commandant, except while a case is being reviewed by the Coast Guard Court of Criminal Appeals or the U.S. Court of Appeals for the Armed Forces.
  - b. The officer exercising general court-martial jurisdiction over the accused, but only to those parts of a sentence which do not include a punitive discharge, except while a case is being reviewed by a supervisory authority other than him or herself, the Coast Guard Court of Criminal Appeals, or the U.S. Court of Appeals for the Armed Forces.
  - c. In addition to his or her authority contained in the Manual for Courts-Martial the immediate commanding officer of the accused, in cases where a punitive discharge has previously been approved, but only as to those parts of the sentence which do not include the punitive discharge, except while a case is being reviewed by the supervisory authority, the Coast Guard Court of Criminal Appeals, or the U.S. Court of Appeals for the Armed Forces.

2. Clemency Action by the Convening Authority. When acting on the findings and sentence of a court-martial, the Convening Authority is authorized by Article 60 of the UCMJ, the Manual for Courts-Martial, and the  Military Justice Manual, COMDTINST M5810.1 (series), in his or her sole discretion, to set aside findings of guilty, change findings to guilty of a lesser included offense, and to approve, disapprove, commute, or suspend any part of the sentence.
3. Clemency Action by the Commanding Officer or Officer Exercising General Courts-Martial Jurisdiction over the Member. Except while the member's case is being reviewed by the Coast Guard Court of Criminal Appeals or the Court of Appeals of the Armed Forces, any Officer Exercising General Court-Martial Jurisdiction over a member is authorized to remit or suspend any unexecuted part of that member's sentence, other than a punitive discharge or a sentence approved by the President. If a punitive discharge has been previously approved, the immediate commanding officer of the member may also exercise the authority described above, subject to the same limitations.  See Military Justice Manual, COMDTINST M5810.1 (series), Enclosure (9).
4. Clemency Power of the Coast Guard Commandant. The Secretary of Transportation has delegated to the Commandant of the Coast Guard the authority contained in Article 74(a), UCMJ, to grant residual clemency, as provided in Enclosure (9) of the  Military Justice Manual, COMDTINST M5810.1 (series). The Secretary reserves this authority in cases in which appellate review is not complete. Pursuant to authority in 10 USC 953, a Coast Guard Clemency Board automatically reviews courts-martial cases that include an unsuspended punitive discharge to determine whether they merit remission or suspension of any unexecuted portions of a court-martial sentence. When an enlisted member sentenced to a punitive discharge waives appellate review of his or her court-martial conviction in accordance with RCM 1110, Manual for Courts-Martial (series), the punitive discharge may be executed by the Officer Exercising General Court-Martial Jurisdiction (OEGCMJ) if the record is forwarded to the OEGCMJ in accordance with RCMs 1112(e) and 1113 and the execution of the sentence is approved. In all other cases no court-martial sentence to a punitive discharge may be executed before the Coast Guard Clemency Board, Commandant, or Secretary as appropriate has reviewed it. Reviewing authorities recommend or determine clemency on the basis of equity and good conscience. Factors affecting clemency include: the nature and circumstances of the offense(s); the defendant's military and civilian history; potential value to the Service or society at large; conduct in confinement; contrition; sincerity in motivation for rehabilitation; social factors including hardship, psychological or personality factors; sentence disparity; and pure mercy.
  - a. Residual Clemency Review. In keeping with the delegation of clemency authority under Article 74(a), UCMJ, when appellate review is complete, the Clemency Board will review every court-martial record whose sentence includes an unsuspended punitive discharge to determine whether that sentence should be executed (no clemency) or to recommend remitting, mitigating, or suspending the punitive discharge sentence (granting residual clemency). The Clemency Board's review also automatically embraces consideration for clemency of any other remaining unexecuted portions of the sentence, such as the remainder of a term of confinement, as well as

any petition for clemency provided to it for consideration. Residual clemency review normally will immediately follow completion of the legal review process.

- b. Petitions for Clemency are not required, and exhaustion of the appellate process and other remedies under the UCMJ must occur before the Clemency Board will consider such a petition. Nevertheless, persons convicted by courts-martial may petition for clemency of the unexecuted portions of their sentences, even if their approved sentences do not extend to punitive discharge. Any petition will generally be considered simultaneously with the automatic clemency review, if applicable. Although no specific form for such petitions is required, petitions need not be considered, and may be returned to the member without action, if they do not meet the following minimum requirements:
  - (1) Petitions must be forwarded to Commandant (G-WPM) and must arrive within 60 days after the sentence and conviction are final under Rule for Court-Martial 1209, Manual for Courts-Martial (series).
  - (2) Petitions must state the specific relief requested, and the specific reasons why the member believes such relief to be appropriate.
  - (3) Where the case has been previously reviewed by the Clemency Board, the petition must identify new facts or circumstances justifying a second review or reconsideration.
  - (4) Petitions must include sufficient evidence to support the request. Such evidence must be in writing and may include documents and citations to specific sections of the record of trial.
- c. Commandant (G-WPM):
  - (1) Will review all petitions for clemency to insure compliance with section 4.b. above.
  - (2) Will establish a Clemency Board in accordance with  Article 8.F.2.h. consisting of a panel of at least three senior officers.
  - (3) Will forward all petitions that are in compliance with this article, and all records of trial received that include an unsuspended punitive discharge, to the Clemency Board or to other appropriate officials.
  - (4) May return petitions that are not in compliance with this article to the member.
  - (5) May forward other matters, as appropriate, to the Clemency Board.
  - (6) Will, in any case in which the review required by this section has been completed and clemency action has not been ordered, issue a statement to that effect, and forward the record of trial to Commandant (G-LMJ) for further processing.
  - (7) Will, in any case in which clemency action has been ordered, take action as necessary to implement that order.

- (8) Will ensure compliance with crime victims' rights to information about convicting, sentencing, incarcerating, and releasing offenders, as mandated by law, throughout the clemency process. See the  Coast Guard Military Justice Manual, COMDTINST M5810.1 (series), Article 2-R.

d. The Coast Guard Clemency Board:

- (1) Will review all court-martial cases or petition submitted to it for a recommendation by proper authority.
- (2) Will forward its recommendation to Commandant (G-WP) via Commandant (G-WPM).



e. Commandant (G-WP) may take final action to approve a recommendation to deny residual clemency and will then return the record to Commandant (G-LMJ). If Commandant (G-WP) does not concur with a Clemency Board recommendation to grant clemency Commandant (G-WP) will provide an endorsement and forward the matter to Commandant for final action.

f. Commandant (G-WP) will also forward a case or petition to the Commandant or to the Secretary, with an appropriate endorsement, if:

- (1) The Secretary or Commandant has indicated a desire to make the clemency decision personally.
- (2) Law or regulation reserves authority to act in the case to higher officials. These include cases that are still pending completion of appellate review or cases where the sentence extends to death or the dismissal of an officer or Academy cadet.
- (3) The case involves violations of national security.
- (4) The Clemency Board or Commandant (G-WP) recommends clemency action or personal consideration by the Secretary or Commandant.

5. Clemency Consideration for Persons in Confinement. The Coast Guard retains clemency authority over all Coast Guard offenders, including Coast Guard prisoners confined in military correctional centers or facilities, including Naval brigs, of the Department of Defense. Nevertheless, the prisoner's conduct in confinement, attitude, and rehabilitation progress represent valuable information to a Coast Guard convening or reviewing authority considering clemency. Accordingly, Navy or Marine Corps commanding officers of Naval brigs are prepared to act on requests of any Coast Guard convening or reviewing authority or of the prisoner personally to provide a Prisoner Evaluation Report, NAVPERS 1640/13, concerning the accused in question. In the event the brig considers clemency warranted with respect to any unexecuted portion of the sentence including an unsuspended sentence to punitive discharge, the brig's non-binding report will recommend accordingly. Prisoner Evaluation Reports are ordinarily prepared annually for all prisoners in long-term confinement (exceeding six months), but can be provided at any time upon request.

**8.F.6.e. Parole**

Parole as defined in  Article 8.F.2.x. may be granted to carefully selected individuals. 10 USC 952 authorizes the Secretaries of the respective Armed Forces to establish a system of parole for prisoners in military confinement facilities. Parole as a modification of the conditions under which a sentence to confinement may be administered constitutes an element of military corrections process. The Coast Guard has not established a military corrections (confinement) system of its own but relies rather on support from the U.S. Navy for long-term confinement. It is nevertheless desirable that the parole opportunities for Coast Guard prisoners confined in Naval brigs be equal to and consistent with those accorded the Navy and Marine Corps prisoners with whom they share the confinement experience. Accordingly, the Secretary of Transportation has delegated the authority to the Secretary of the Navy to adjudicate parole requests and to administer parole for Coast Guard prisoners confined in Naval brigs in precisely the same manner as for prisoners from the Navy Department. It is stressed in this regard, that parolees remain in the legal custody and under the control of the commanding officer of the Naval brig until the expiration of the full-term or aggregate terms of the sentence to confinement, without credit for good time allowance. Within the Navy Department, the Secretary of the Navy has tasked the Naval Clemency and Parole Board with responsibility for determination of parole requests. Petitioners for parole have appeal rights to the Director, Navy Council of Review Boards. Note that these provisions permit Navy determination of Coast Guard prisoners' parole requests only. Clemency powers on the contrary remain resident in appropriate Coast Guard authorities as provided for in  Article 8.F.6.d.

1. Eligibility. A military prisoner with an unsuspended sentence to punitive discharge or dismissal shall be eligible for parole consideration by the Naval Clemency and Parole Board as follows:
  - a. Sentence or aggregate sentence of:
    - (1) More than one year and not more than three years, who has served one-third of the term of confinement, but in no case less than six months; or
    - (2) More than three years who has served not less than one year. If not considered earlier, the prisoner will become eligible for consideration after serving one-third of the approved or affirmed sentence or aggregate sentence, or not more than ten years when the sentence is life or in excess of 30 years.
  - b. Good time allowance will be excluded in computing eligibility for parole consideration.
  - c. With respect to parole consideration of a prisoner whose sentence provides for contingent additional confinement in the event an approved sentence to fine is not paid, eligibility for parole shall be based on the basic term of confinement plus any additional contingent confinement incurred through failure to pay the fine. If the approved sentence provides for confinement only if a fine is not paid, a prisoner confined in lieu of payment will become eligible for parole consideration after having served 6 months of the sentence to confinement in lieu of payment of the fine, and annually thereafter.